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5 UNITED STATES DISTRICT COURT

6 DISTRICT OF NEVADA

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8 WELLS FARGO BANK, N.A.,

9 Plaintiff,

3:17-cv-00332-LRH-WGC

10 v.

ORDER

11 SFR INVESTMENTS POOL 1, LLC;  
12 THE FOOTHILLS AT WINGFIELD  
13 HOMEOWNERS ASSOCIATION;  
14 FULLER JENKINS CLARKSON, P.C.,

Defendants.

15 Before the court is SFR Investments Pool 1, LLC's ("SFR") motion for security for costs  
16 pursuant to NRS 118.130(1). ECF No. 9.

17 This case involves a homeowners association's ("HOA") non-judicial foreclosure of real  
18 property in Sparks, Nevada. ECF No. 1 at 2. Plaintiff Wells Fargo Bank is the beneficiary of the  
19 subject property's deed of trust, which the foreclosure purportedly extinguished under  
20 NRS 116.3116 *et seq. Id.* Wells Fargo filed suit in this court against the HOA and SFR, the  
21 property's purchaser, claiming that the Nevada statute is unconstitutional on its face and as  
22 applied.<sup>1</sup> *Id.* Wells Fargo has also brought state-law claims, asserting that the foreclosure sale  
23 violated NRS 116.3116 and resulted in unjust enrichment. *Id.* at 12–13. Ultimately, Wells Fargo  
24 is seeking quiet title and declaratory relief establishing that its deed of trust was not extinguished  
25 and that the foreclosure sale and transfer of title are void. *Id.* at 14.

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28 <sup>1</sup> Specifically, Wells Fargo claims that NRS 116.3116 violates the Fifth Amendment's Takings Clause and Due Process Clause, as well as the Supremacy Clause. ECF No. 1 at 7–9; *see also* ECF No. 4.

1 SFR now moves for security for costs pursuant to NRS 18.130(1). The statute states in  
2 pertinent part that, “[w]hen a plaintiff in an action resides out of the State, or is a foreign  
3 corporation, security for costs and charges which may be awarded against such plaintiff [not to  
4 exceed \$500] may be required by the defendant, by the filing and service on plaintiff of a written  
5 demand therefor within the time limited for answering the complaint.” Nev. Rev. Stat.  
6 § 18.130(1). While such security is not required under the Federal Rules of Civil Procedure, “[i]t  
7 has been the policy of the United States District Court for the District of Nevada to enforce the  
8 requirements of NRS § 18.130 in diversity actions.” *Hamar v. Hyatt Corp.*, 98 F.R.D. 305 (D.  
9 Nev. 1983).


10 However, “[w]hen suit is brought under a federal statute, state provisions requiring  
11 security for costs or expenses clearly are inapplicable.” 10 Charles Alan Wright & Arthur R.  
12 Miller, *Federal Practice and Procedure* § 2671 (3d ed.). Instead, the court may apply its own  
13 rules or state practice to require security for costs as a discretionary matter, taking into account  
14 the policy of the underlying federal statute, the defendant’s ability to recover costs from an out-  
15 of-state plaintiff if the defendant prevails, the plaintiff’s solvency, and any other pertinent  
16 factors. *Id.*

17 Here, Wells Fargo filed suit in this court pursuant to both federal-question and diversity  
18 jurisdiction. ECF No. 1 at 1. However, it is evident from its complaint that its claims are  
19 primarily constitutional in nature. The court finds that it would be contrary to public policy to  
20 automatically require security for costs under NRS 18.130 in cases involving alleged violations  
21 of the U.S. Constitution. Moreover, SFR has made no attempt to present grounds for requiring  
22 security for costs on the facts of this case. The court will therefore deny its motion.

23 IT IS THEREFORE ORDERED that SFR Investments Pool 1, LLC’s motion for security  
24 for costs pursuant to NRS 118.130(1) (ECF No. 9) is **DENIED**.

25 IT IS SO ORDERED.

26 DATED this 29th day of June, 2017.

27   
28 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE